

## **The Origin and Interpretation of Article VI**

by Ambassador Thomas Graham, Jr.

November 29, 2007

Christopher Ford has written an excellent paper on Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Many of his arguments are well taken and sound, if Article VI is analyzed like a provision in a contract or indeed an ordinary article in a treaty. The language of Article VI, preambular in nature, was primarily aimed at ending the nuclear arms race, which was accomplished by the time of the Strategic Arms Reduction Treaty (START) in 1991.

However, I would submit that Article VI should be viewed largely through the prism of political analysis as part of the NPT's central bargain of nonproliferation in exchange for nuclear disarmament (and peaceful nuclear cooperation referred to in Article IV). Thus, if Article VI is viewed in strictly legal terms, the overall conclusions of Ford's paper are supportable. If, on the other hand, one regards the NPT as resting on a political bargain with Article VI its symbol, one comes to a different conclusion. (I recently presented a paper at Stanford's October 2007 conference on the NPT, and the following analysis is based partly on that work.)

Beginning in 1965, three years before signature of the NPT, a number of the potential non-nuclear weapon states party to the NPT asserted that among other general principles, a future treaty on the nonproliferation of nuclear weapons should be based on the principles that: "the Treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear powers," and "the Treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament." These principles were contained in a resolution that called for the negotiation of an international treaty to prevent the proliferation of nuclear weapons and passed the UN General Assembly at its twentieth session in 1965. The eight non-aligned members of the Eighteen-Nation Disarmament Committee in Geneva (ENDC, now the Conference on Disarmament), where the treaty was being negotiated, had weeks earlier placed on ENDC's record their view that "measures to prohibit the spread of nuclear weapons should ... be coupled with or followed by tangible steps to halt the nuclear arms race and to limit, reduce and eliminate the stocks of nuclear weapons and the means of their delivery." The language "coupled with or followed by" was intended to strike a balance between states such as India and Sweden that were advocating that the "tangible steps" should be contained in or accompany the treaty and states that were willing to accept a commitment that such steps would come later.

Also, in 1965 India and Sweden proposed a "package" solution that set forth what these "tangible steps" were considered by many to be: security assurances, a freeze on production of nuclear weapons, a comprehensive nuclear test ban, and a cutoff of all production of fissionable materials for military purposes. These issues remain central to the success of the NPT regime to this day. Nuclear disarmament and ending the nuclear arms race were the main goals, and this is reflected in the Preamble to the NPT in paragraphs eight and eleven. There was one specific measure, however, that many delegations wanted included as an objective above all others—if

the nuclear weapon states could not significantly reduce their nuclear weapon stockpiles in the near future, at least they could stop conducting explosive tests of nuclear weapons.

The two co-chairs of the negotiations, the United States and the Soviet Union, were unwilling to include specific measures on nuclear disarmament in the NPT text, but they did agree to include a reference to a comprehensive nuclear test ban in the Preamble's tenth paragraph. Throughout the NPT negotiations the co-chairs, particularly the United States, consistently emphasized the relevance of the NPT Review Conferences to nuclear disarmament and the achievement of measures to halt the nuclear arms race. Article VI was their agreed token in this regard. At the first ENDC meeting following the July 1 opening of the NPT for signature—August 15, 1968—the two co-chairs presented an agenda for the ENDC as a compromise between those states that had wanted commitments to specific measures in the NPT and those that did not. The nuclear part of this agenda was essentially the “package” of India and Sweden. The non-nuclear weapon states at the ENDC presented their own agenda a month later that was comparable; in both agendas, the “freeze” on the production of nuclear weapons had become “the reduction and subsequent elimination of nuclear weapon stockpiles.” The NPT Review Conferences were charged to “review the operation” of the NPT to assure “that the purposes of the Preamble and the provisions of the Treaty are being realized.” The United States and Soviet Union were of the view in 1968 that the future viability of the NPT depended on the results achieved in this field.

The Review Conferences proved to be a great disappointment to the NPT non-nuclear weapon states. The 1980 and 1990 Review Conferences failed over Article VI issues, principally the nuclear test ban, and the 1975 and 1985 Review Conferences simply papered over profound differences on the same subject. A majority of the parties believed that the nuclear weapon states had not lived up to their disarmament commitments. I witnessed much of this during my long career with the U.S. government, in which I participated in a senior capacity in every major arms control and nonproliferation negotiation in which the United States took part from 1970 to 1997, and specifically during in my role as special representative of the president for arms control, nonproliferation, and disarmament.

In 1995, the NPT parties agreed by consensus to indefinitely extend the treaty. Their agreement to do so was accompanied by explicit political conditions, in the form of the Statement of Principles and Objectives on Nonproliferation, essentially that the 1965 “package” be implemented, along with other related matters. Indefinite extension of the NPT in 1995 depended on these political conditions. It might not have happened otherwise, or if it did, it would have been in a most divisive manner. Recognizing that little progress had been made on realizing the commitments of the statement, the NPT parties met again at the 2000 Review Conference and unanimously agreed that the package, along with a number of other related measures, needed to be implemented to preserve the NPT—this decision is referred to as the Thirteen Steps. The 2005 Review Conference was a complete failure, with the U.S. delegation questioning the continued relevance of the Statement of Principles and Objectives on Nonproliferation and the Thirteen Steps.

So where are we today on the essential nuclear arms control package that was there at the treaty's creation in 1968? There is still no Comprehensive Nuclear-Test-Ban Treaty in force. Nothing has ever happened toward negotiating a Fissile Material Cutoff Treaty. The five nuclear

weapon states made national statements on security assurances, essentially saying that they would not use nuclear weapons against their non-nuclear NPT partners—the non-nuclear weapon states wanted them to be legally binding, but the nuclear weapon states provided only policy statements; nevertheless, the national policies of four of the five NPT nuclear weapon states hold open the option of using nuclear weapons against NPT non-nuclear weapon states. Finally, the 1987 Intermediate-Range Nuclear Forces Treaty and the 1991 START provided reductions in nuclear weapons, but there have been no further negotiated reductions in such weapons since these treaties. (The 2002 Moscow Treaty, though valuable, did not involve actual reductions of weapons, only reductions in the number of “operationally deployed” weapons. That is, it did not require the destruction of any of those weapons.) Thus, it is not possible to say that the NPT nuclear weapon states have delivered on their nuclear arms control commitments, which are represented by Article VI.

Giving up forever the most powerful weaponry ever created and joining a treaty that enshrines this principle is not a natural act for a sovereign state, and as the NPT permits a small number of states to have these weapons for many years into the future, it is a political necessity for many states, in order to create a semblance of equality among treaty parties, not only to have a general article committing the treaty’s nuclear weapon states to eventual nuclear disarmament, but also to achieve specific steps in that direction in the shorter term. The NPT is not a gift from the treaty’s 182 non-nuclear weapon states to the five nuclear weapon states; it is a political and strategic bargain. The Article VI situation should be readdressed in that light in order to continue to be able to preserve a viable and effective NPT.

---